

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

UNITED STATES OF AMERICA and)
THE STATE OF WISCONSIN,)
Plaintiffs,)) Civil Action No. 10-C-910
v.)
NCR CORPORATION,)
APPLETON PAPERS INC.,)
BROWN COUNTY,)
CITY OF APPLETON,)
CITY OF GREEN BAY,)
CBC COATING, INC.,)
GEORGIA-PACIFIC CONSUMER PRODUCTS LP,)
KIMBERLY-CLARK CORPORATION,)
MENASHA CORP.,)
NEENAH-MENASHA SEWERAGE COMMISSION,)
NEWPAGE WISCONSIN SYSTEMS, INC.,)
P.H. GLATFELTER CO.,)
U.S. PAPER MILLS CORP., and)
WTM I COMPANY,)
Defendants.)

**DEFENDANT NCR CORPORATION'S RESPONSE TO
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT THAT
DEFENDANTS ARE LIABLE PARTIES UNDER CERCLA SECTION 107(a)**

Defendant NCR Corporation (“NCR”), by and through its undersigned counsel, submits this response to Plaintiffs’ Motion for Partial Summary Judgment that Defendants Are Liable Parties Under CERCLA Section 107(a) (Dkt. #549) (the “Motion”).

NCR does not dispute, with respect to the Lower Fox River and Green Bay Site (the “Site”), that:

- NCR is a “person” that is among the four classes of covered persons under § 107(a) of CERCLA, 42 U.S.C. § 9607(a);

- NCR and/or its corporate predecessors owned and/or operated a facility located at 825 East Wisconsin in Appleton, Wisconsin (the “Appleton Facility”) and a facility located at 540 Prospect Street in Combined Locks, Wisconsin (the “Combined Locks Facility”) between 1954 and June 30, 1978;
- at times between 1954 and April 1971, the Appleton Facility discharged wastewater which contained PCBs into the wastewater treatment plant operated by the City of Appleton (the “City of Appleton POTW”);
- the Appleton Facility, Combined Locks Facility, and City of Appleton POTW are “facilities” within the meaning of CERCLA § 101(9), 42 U.S.C. § 9601(9);
- there were “releases” of PCBs from the City of Appleton POTW and the Combined Locks Facility to the Site between 1954 and April 1971 within the meaning of CERCLA §§ 101(22) and 107(a), 42 U.S.C. §§ 9601(22) and 9607(a); and
- these “releases” of PCBs caused the incurrence of some “response costs” at the Site.

To the extent that this is all that Plaintiffs seek to establish as to NCR in their Motion, NCR does not oppose the Motion.

NCR maintains, however, that it is *not* jointly and severally liable at the Site, and expressly reserves its right to assert, and to present testimony at trial, that the liability at the Site is divisible and/or reasonably capable of apportionment (the “divisibility defense”). NCR further disputes that Plaintiffs are entitled to any of the relief they seek from this Court in their First Amended Complaint, and expressly reserves its right to dispute any issue related to the relief Plaintiffs seek, other than the specific facts listed above. These reserved issues include, but are not limited to, NCR’s divisibility defense; NCR’s position that the selected remedy at the Site is arbitrary, capricious, and/or otherwise not in accordance with law; and NCR’s position that certain provisions of the November 2007 Unilateral Administrative Order are unenforceable because they are beyond the scope of the U.S. Environmental Protection Agency’s authority under CERCLA.

Dated: November 6, 2012

Respectfully submitted,

NCR CORPORATION

/s/ Evan B. Westerfield

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